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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/715,874	11/17/2000	Carl M. Sullivan	30222/20:100	7638

3528 7590 02/13/2002

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EXAMINER

FERGUSON, LAWRENCE D

ART UNIT	PAPER NUMBER
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1774

DATE MAILED: 02/13/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/715,874

Applicant(s)

SULLIVAN ET AL.

Examiner

Lawrence D Ferguson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4 6) ☐ Other:

DETAILED ACTION

Claim Rejections – 35 USC 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 1-17 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- a. In claim 1, the term “generally” is relative and therefore indefinite.
- b. In claim 9, the phrase “an amount sufficient” is indefinite.
- c. In claim 9, the term, “adequate” is relative and therefore indefinite.

Claim Rejections – 35 USC § 103(a)

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-4 and 6-9 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watanabe et al. (U.S. 5,929,133).

Watanabe discloses a film suitable for food packaging wrap having transparency, anti-fogging property and PVC (abstract) having a suitable degree of air permeability (column 1, lines 21-22) which is analogous to gas permeability. Watanabe discloses a plasticizer consisting of epoxidated soybean oil (column 2, lines 63-65) and further discloses adipate polyester (column 2, line 66 through column 3, line 7). Watanabe discloses surface reactant agents (column 5, lines 15-17) and a heated mixture (column 5, line 24) of the materials. The polymer composite film structure formed by lamination or extrusion is a product by process. Additionally, a process aid in an amount sufficient to provide adequate lubrication and heat stabilization is a product by process. "Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 227 USPQ 964, 966. Watanabe does not disclose the film thickness, the amount of surface-active agent or the amount of plasticizer. Film thickness, amount of surface active agent and amount of plasticizer are optimizable. It would have been obvious to one of ordinary skill in the art to optimize the components since discovering the optimum or workable value is of ordinary skill in the art.

Claim Rejections – 35 USC § 103(a)

5. Claims 5 and 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watanabe et al. (U.S. 5,929,133) in view of Purdy (U.S. 4,565,738).

6. Watanabe is relied upon for claims 1-4 and 6-9 and 17. Watanabe does not disclose the film being multilayered or antiblocking agents. Purdy teaches a multiple-layer film, suitable as a packaging film, having a base layer and surface layer with a heat-sealable coating (abstract). Purdy teaches adhesion between the layers (column 4, lines 41-42). Purdy teaches gas permeability (column 5, line 55) and additives such as anti-static agents, anti-blocking agents and surface active agents (column 6, lines 44-47). Watanabe and Purdy are analogous art because they are from the same field of packaging film. It would have been obvious to one of ordinary skill in the art to include an additional layer to the packaging film of Watanabe because Purdy teaches the additional layer helps reduce moisture from the environment. It would have further been obvious to one of ordinary skill in the art to include the anti-blocking properties in the surface active agent of Watanabe because Purdy teaches the anti-blocking agents help reduces moisture build-up from the environment. Although the gas permeability rate is not specified for both layers, because the combination of references have the same materials as applicant, it would be expected that both layers would have the gas permeability as claimed, absent any evidence to the contrary. Neither reference teaches the two layers having varying melting points. Because the

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references comprise the same materials as applicant, it would be expected that the melting points are the same, absent any evidence to the contrary.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lawrence Ferguson whose telephone number is (703) 305-9978. The examiner can normally be reached on Monday through Friday 8:30 AM – 4:30PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cynthia Kelly can be reached on (703) 308-0449. Please allow the examiner twenty-four hours to return your call.

The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2351.

LDF

Lawrence D. Ferguson
Examiner
Art Unit 1774

CYNTHIA H. KELLY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700

Cynthia H. Kelly